



Testimony of  
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Before the  
Senate Committee on  
Commerce, Science and Transportation

On  
S. 303 the Satellite Television Act of 1999

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## **INTRODUCTION**

Consumers Union<sup>1</sup> believes that the need to promote more competition in the cable industry could not be more obvious. Cable rates have risen about 21 percent since passage of the 1996 Telecommunications Act<sup>2</sup> and continue to climb three to four times faster than the rate of inflation (see Attachment A). Even the chairman of the Federal Communications Commission (FCC) admits that rates are going up excessively under his agency's "liberal" -- in other words, meaningless -- regulatory structure (see Attachment B). As a Congressionally mandated prohibition on regulating the most popular cable channels approaches (March 31, 1999),<sup>3</sup> now is the time to act.

## **LACK OF COMPETITION TO CABLE**

So far, despite rapid growth at the high end of the market, satellite television has failed to offer true price competition to cable. In inflation-adjusted dollars, cable rates are rising just as fast today as they did before the Direct Broadcast Satellite (DBS) industry began offering service.<sup>4</sup> With up-front costs (for the satellite dish and related installation charges) running three to five times the cost of installing cable, and lacking carriage of local broadcast channels, satellite TV has been unable to discipline pricing for the most popular cable services.

In addition nearly one-half of satellite TV subscribers purchase both DBS and cable TV services.<sup>5</sup> Even as satellite attracts previous cable subscribers, the cable industry makes more money by raising prices to all its remaining and new

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<sup>1</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about good, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

<sup>2</sup> Public Law 104-104, 110 Stat. 56 (1996)

<sup>3</sup> 47 U.S.C. Sec 543 (c)(4), Public Law 104-104 Section 301

<sup>4</sup> Dr. Mark Cooper and Gene Kimmelman, "The Digital Divide Confronts the Telecommunications Act of 1996," Consumers Union and Consumer Federation of America, February 1999 at 38

<sup>5</sup> *Id*

subscribers. For example, since passage of the Act, cable's rate increases yielded almost three times more revenue than cable lost to the growth in DBS subscriptions. See Attachments C and D. Obviously, satellite TV does not discipline cable prices.

In contrast, FCC data show that where cable faces head-to-head competition from another transmission "wire," cable rates are about 10 percent lower than where cable faces only satellite TV challengers.<sup>6</sup>

## **THE NEED FOR POLICY ADJUSTMENTS**

The failure of federal policy to ensure reasonable cable rates makes it necessary for policymakers to devote greater attention to promoting increased competition to the cable industry. Legislation that puts cable's potential competitors on the same legal footing as cable companies, could open the door to more choice and lower prices for all TV services.

Recent deals that combine EchoStar Communications Corporation's DBS business with DBS facilities owned by News Corporation and MCI/WorldCom, and DIRECTV's combination with United States Satellite Broadcasting and PRIMESTAR, dramatically consolidate the satellite industry. However, these deals also could offer consumers more choice and lower prices if the consolidated satellite companies more aggressively compete against cable.

We believe it is critical to both enable and require these satellite companies to become head-to-head competitors with cable for the core TV services that consumers watch the most. This requires:

- Passage of legislation, like Senator McCain's S.303, the "Satellite Television Act of 1999," and Senator Hatch's S. 247, the "Copyright Compulsory License Improvement Act" which -- with modest modifications -- begin to give satellite and other potential competitors comparable treatment under our nation's communications and copyright laws;
- Expansion of previous laws designed to hold down cable rates and make popular TV channels available to cable's potential competitors;
- Aggressive regulatory oversight of potential competitor's access to cable-

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<sup>6</sup> In the Matter of Annual Assessment of the Status of Competition in Markets for the delivery of Video Programming, FIFTH ANNUAL REPORT, CS Dkt. No. 98-102, Dec. 23, 1998, at F-4, footnote 18

owned programming or programming that cable companies exert monopolistic influence over; and

- Strong antitrust/regulatory review of satellite mergers to ensure that satellite companies continue to reduce up-front costs and eliminate other market impediments to direct price competition with the cable industry.

Because of the highly concentrated nature of the cable marketplace, policies designed to foster increased competition throughout the market require giving potential competitors breathing room as they seek to enter the market and expand their businesses. The two largest cable companies, Tele-Communications Inc. (TCI) and Time Warner, own a substantial stake in cable systems serving about one-half of all cable customers, and TCI has an ownership stake in 67 national programming channels while Time Warner has a stake in 30 national channels.<sup>7</sup> In addition TCI owns about 9 percent of Time Warner. Most importantly, 29 of the 50 most subscribed-to channels, and nine of the top 15 prime-time watched channels are substantially owned by the largest cable companies.<sup>8</sup>

S. 303 would enable most consumers who, in good faith, purchased satellite TV services, to continue to receive broadcast network channels. These consumers, who have made an enormous investment in exactly what Congress has been promoting – a potential competitor to cable TV -- must not be held hostage to a battle between a highly profitable broadcasting business<sup>9</sup>, and satellite companies over slightly greater profits.

Beginning with S. 303 and other pro-competitive measures, Congress can ensure that satellite and other potential cable competitors have an opportunity to challenge cable's dominance and gain a large enough market presence to offer a mass-market alternative to cable.

Unfortunately, experience under the 1996 Telecom Act and its predecessor, the 1992 Cable Act<sup>10</sup> demonstrates that market entry does not always translate into mass-market competition. The satellite TV industry has been enormously successful by focusing on high-end consumers who are willing (and able) to pay hundreds of dollars for a dish, want hundreds of channels, desire specialized programming (e.g., sports, movies) and are interested in higher quality (digital)

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<sup>7</sup> FIFTH ANNUAL REPORT, op. cit., at Appendixes C and D

<sup>8</sup> Id.

<sup>9</sup> Comments of Dr. Dean Alger, In the Matter of Local Broadcast Ownership, FCC En Banc Hearing, February 12, 1998 at 26.

<sup>10</sup> Public Law 102-385, 106 Stat. 1460 (1992)

signals. While recent satellite industry efforts to reduce up-front cost to consumers are promising, they are not enough to promote rapid price competition with cable.

Consumers Union therefore believes that, as policymakers open the cable market to more competition from satellite TV providers, the satellite companies must be responsive to the public's demand for competition to the most popular cable offerings. Efforts to promote price competition by reducing up-front costs and adding local broadcast signals to popular cable programming packages must be encouraged, to jump-start mass market rivalry with cable. Only when satellite TV offers the vast majority of cable subscribers an alternative that meets their needs will cable companies be forced to bring down prices.

## **CONCLUSION**

Immediate, forceful public policy measures designed to promote mass-market competition to the cable industry and block cable's monopolistic practices can offer consumers relief from spiraling cable rates. It is time for Congress, antitrust and regulatory bodies to ensure that potential competitors like satellite TV companies have a fair chance to compete on price with the cable television industry.